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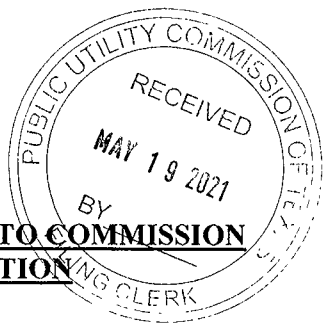

SOAH DOCKET NO. 473-21-0538
PUC DOCKET NO. 51415

SOUTHWESTERN ELECTRIC POWER COMPANY'S RESPONSE TO COMMISSION STAFF'S SEVENTEENTH REQUEST FOR INFORMATION

Question Staff No. 17-5:

Refer to the testimony of David A. Hodgson at page 3, lines 11-13 which states "Staff's recommendation to disallow SWEPCO's NOL carryforward in this case is the exact type of consolidated tax adjustment the Texas Legislature repealed in 2013." Please provide a detailed explanation of how excluding from rate base a NOLC asset for which SWEPCO received cash payment and is no longer on SWEPCO's actual books and records is the **exact type** of consolidated tax adjustment adopted by the Commission in Docket No. 14965, Docket No. 16705, Docket No. 22350, Docket No. 22355, Docket No. 28840, and Docket No. 33309 wherein the tax losses of utility affiliates were used to calculate a "tax shield" or "interest credit."

Response Staff No. 17-5:

In amending PURA § 36.060(a), the Texas legislature intended to do away with all consolidated tax adjustments and ensure that electric utilities' rates were set on a separate return basis. The author's/sponsor's statement of intent in the bill analysis of S.B. 1364 (Hodgson Rebuttal WP 2) provides in part as follows:

> ...the income, gains, losses, and deductions of an electric utility's affiliates, including the federal income tax consequences of such income, gains, losses, and deductions, will not affect the electric utility's cost of service and rates charged for utility service.

In order for a utility to receive a payment for a loss through the tax allocation agreement, there must be an affiliate company, or companies, within the consolidated group that has generated taxable income. Any payment received by SWEPCO through its tax allocation agreement is the result of the federal income tax consequences of its affiliates' income, gains, losses, and deductions. Moreover, the bill analysis provided by the House Research Organization (Hodgson Rebuttal WP 1) states that supporters of the bill said the following:

> SB 1364 would fix a simple problem. The PUC's interpretation of current law allows the agency to set rates...partially based on the performance of utilities' non-Texas businesses.

Later, the bill analysis goes on to state the following:

> ...the PUC was not going to try to reach outside of Texas to an affiliated company to try to pull in a tax benefit earned by that affiliated company for the benefit of Texas ratepayers.

Based on the actual amended language of PURA § 36.060(a) and the referenced bill analysis, it is clear that the author and supporters of SB 1364 intended that Texas utilities calculate their taxes on a stand-alone basis. That is, utility rates should be set solely on the basis of the income, expense, and tax attributes related to providing electric utility service to customers and should exclude any adjustments related to affiliate companies. The tax attributes that are relevant to the Company's regulated operations in Texas are those corresponding to the Company's regulated assets and costs in Texas. Tax attributes of the Company's affiliates or the Company's non-regulated assets and operations are not relevant to the utility's rates because the assets and costs of affiliates or non-regulated assets and operations are not included in the Company's rate base or cost of service.

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